United States Court of Appeals

for the Second Circuit

REPLY BRIEF

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

DIGNA BALLENILLA-GONZALEZ,

Petitioner,

v.

IMMIGRATION AND NATURALIZATION SERVICE,

Respondent.

76-4130

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P/S

ON PETITION FOR REVIEW OF AN ORDER OF DEPORTATION
FROM THE BOARD OF IMMIGRATION APPEALS

REPLY BRIEF OF PETITIONER

JOANNE M. MINOR
WATERBURY LEGAL AID
SOCIETY
61 Field Street
Waterbury, Connecticut 06702
(203) 756-8074

ROBERT S. CATZ
ELLEN SUDOW
KATHRYN DAHL
The URBAN LAW INSTITUTE of the
ANTIOCH SCHOOL OF LAW
1624 Crescent Place, N.W.
Washington, D.C. 20009
(202) 265-9500

Counsel for Petitioner

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INTRODUCTORY STATEMENT

In Petitioner's opening brief we raised significant constitutional and statutory claims against the deportation order, and requested that it be reversed by this Court. The government filed a brief in opposition. That brief misstates operative facts central to the legal issues raised in this appeal. It misapplies the law and misreads key cases relating to Petitioner's due process rights to appointed counsel and her statutory right to retain counsel. The government's brief

also presents an internally inconsistent argument to support I.N.S.'s decision concerning voluntary departure, while omitting any response to the legislative history and other authority advanced by Petitioner in support of her claim. Consequently, this reply follows.

ARGUMENT

I. PETITIONER'S RESTATEMENT OF THE OPERATIVE FACTS CENTRAL TO THE LEGAL ISSUES RAISED IN THIS APPEAL.

Petitioner, Digna Ballenilla-Gonzalez, is an indigent alien who was ordered deported for allegedly overstaying her visa. The immigration law judge found that Petitioner was indigent when he denied her voluntary departure. (Jt. App. 44-45).[1/]

Petitioner was ordered deported following a hearing in which she was unrepresented by counsel. During the hearing she was told that she had a right tc retain counsel at no expense to the government. However, Petitioner was not told that as an indigent she could get pro bono legal services until after the immigration judge had found her deportable and denied her voluntary departure. (Jt. App. 40-47).

Petitioner never stated that she did not want a lawyer, only that she did not think that she needed one (Jt. App. 40-41). She did not think she needed a lawyer, since it was clear at that point that Petitioner did not understand the nature of the proceedings. Later in the transcript, the

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1/ The government maintains that there is no evidence that Petitioner is indigent (Brief for Appellee, at 22,n.11). However, in the very same footnote, the government argues that the immigration law judge referred Petitioner to legal services just as soon as he discovered that she was indigent.

immigration judge was forced to go off the record to have the Order to Show Cause read and explained to Petitioner. (Jt. App. 42). The immigration judge made no attempt to re-explain Petitioner's right to counsel to her after going back on the record. Thus, contrary to the government's position, (Brief for Appellee, 5), Petitioner did not understand the nature of the hearing at the time she was asked to waive her statutory right to retain counsel.

The immigration law judge's finding of deportability was based solely on Petitioner's admissions to the Order to Show Cause (Jt. App. 38). There is no other evidence in the hearing record to establish Petitioner's deportability. These admissions were equivocal and contradictory (See Argument IV, Brief for Petitioner, at 42). Contrary to the government's statement of the facts, there is no clear proof in the hearing record that neither Petitioner nor anyone on her behalf applied for such an extension and that the INS did not grant the extension. (Brief of Appellee, at 3.)

II. THE GOVERNMENT RELIES ON OUTMODED DISTINCTIONS AND IMPROPER TESTS TO DETERMINE WHETHER PETITIONER'S DUE PROCESS RIGHTS WERE VIOLATED WHEN THE GOVERNMENT FAILED TO APPOINT COUNSEL.

Petitioner submits that the government's failure to appoint counsel for her denied her due process since the Fifth Amendment requires the appointment of counsel for indigents in adversary proceedings initiated by the government where liberty is at stake. (Argument I, Brief for Petitioner at 7).

The government relies on the outmoded civil/criminal distinction and the application of a balancing test to argue that due process does not require the appointment of counsel to indigent aliens in deportation proceedings. (Brief for Appellee, at 9). In so doing, the government fails to apply the appropriate tests for determining whether counsel should have been appointed.

A. The Government Has Ignored the Current Trend of Judicial Decisions Favoring the Appointment of Counsel Where Liberty is at Stake in Adversary Proceedings.

The government ignores the recent judicial trend of rejecting civil/criminal labels as the test for appointing counsel in various proceedings. In Re Gault, 387 U.S. 1 (1967), Heryford v. Parker, 396 F.2d 393 (10th Cir. 1968); Gagnon v. Scarpelli, 411 U.S. 778 (1973); See also cases cited in Brief for Petitioner, 12-14.

In each of these decisions, the civil/criminal distinction is rejected. The determination that due process requires the appointment of counsel turns on the fact that liberty is at stake in a complex proceeding initiated by the government, possessing infinite resources, against an indigent needing the assistance of counsel to adequately present his or her case.

The government's attempt to narrowly define "liberty" is also misplaced. "Liberty" is not merely the opposite of being confined to jail. This is apparent from cases requiring the appointment of counsel in proceedings to terminate parental rights (Brief for Petitioner, 14-15), as well as early deportation cases (Brief for Petitioner, at 8). As those cases illustrate, the right to remain in this country or to return unhampered by the stigma of having been deported[2/] is a more lasting deprivation of liberty than the potential for confinement at stake in certain criminal misdemeanor cases. See Argersinger v. Hamlin, 407 U.S. 25 (1972).

2/ The government argues that because Petitioner was a non-immigrant student, her interest in remaining in this country is transitory. However, a student like any other deported alien retains the stigma of deportation as well as the accompanying problems of re-entering this country at any time in the future. Gordon & Rosenfield, Immigration Law & Procedure (rev'd ed. 1975), Section 7.2(c). It is also significant that there are no distinctions in statutory due process rights to counsel based on whether or not the alien is a non-immigrant student or a permanent resident.

B. The Government's Balancing Test Is Inappropriate.

Petitioner contends that since the result of deportation proceedings parallels criminal confinement, civil commitment and termination of parental rights in its form and consequences, the Constitution requires the appointment of counsel to indigent aliens in those proceedings on a per se basis. Any alternative test would require the courts to second guess the administrative record, intrude in the operation of an executive agency and increase the workload of an already overburdened judicial system. (Brief for Petitioner, 16-21).

However, if this Court finds that the due process right to appointed counsel should be applied on a case-by-case basis only, its analysis should be based on the tests set out in Gagnon v. Scarpelli as adopted to deportation proceedings by the 6th Circuit in Aquilera-Enriquez v. I.N.S., 516 F.2d 565 (6th Cir. 1975).

The government's brief makes the inaccurate observation that:

> The Courts have never applied the right to a fair administrative hearing so as to require the Service to appoint counsel for indigent aliens at governmental expense. (Brief for Appellee, at 10.)

This statement is followed by a cite to Aquilera-Enriquez

v. I.N.S., supra [3] which specifically held:

> Where an unrepresented indigent alien would require counsel to present his position adequately to an immigration judge, he must be provided with a lawyer at the Government's expense. Otherwise, "fundamental fairness" would be violated.

Id., at 568-569, n.3.

Counsel was necessary in Petitioner's case to adequately present her position to an immigration judge. As explained in the Brief for Petitioner, at 23-24, Petitioner's attempts to present a defense for her alleged overstay were ignored by the immigration judge and, therefore, did not get a full airing. Counsel could also have guarded against the procedural irregularities that marked the proceeding, e.g., basing the decision on equivocal and unknowing admissions, failing to fully inform Petitioner of her right to retain counsel, accepting ambivalent statements as a waiver to that

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[3] The government's failure to properly characterize the holding in this case is curious since it is inconsistent with the Solicitor General's representation of the holding to the U.S. Supreme Court that " . . . due process requires that counsel be provided to indigent aliens at deportation hearings whenever it would be necessary to ensure fundamental fairness . . . " See Memorandum of the Solicitor General submitted on behalf of the Defendants in Opposition to Petition for Writ of Certiorari, Aguilera-Enriquez v. I.N.S., No. 75-488, October 1975, at p. 2.

right before Petitioner understood tha nature of the proceedings, and denying Petitioner voluntary departure in violation of procedural regulations (later reversed by the Board). Finally, counsel could have presented an explanation of mitigating circumstances surrounding Petitioner's case. As suggested in Henriques v. I.N.S., 465 F.2d 119, 121 (2d Cir. 1972) and in contrast to the government's suggestion (Brief for Appellee, at 20,n.8), the need for counsel to present mitigating circumstances for an overstay might require appointment at government expense.

Thus, the fundamental fairness test for appointment of counsel is not as suggested in the government's brief a balancing test in which the liberty of the alien is weighed against the financial and administrative burden to the government.[4/]

[4/] Even if the balancing test were proper, the government has failed to prove that requiring appointment of counsel to indigent aliens would greatly increase the cost and reduce the efficiency of the Service's attempts to control illegal aliens. The citing of statistics as to the number of aliens that have been apprehended during 1975 is misleading since I.N.S. institutes deportation proceedings (by issuing orders to show cause) against less than 10% of those individuals the Service apprehends. Of the 788,145 persons apprehended by the Service in fiscal year 1974, only 47, 475 had an order to show cause issued against them. See 1974 INS Annual Report at p. 84. Of the 655,968 persons apprehended in fiscal year 1973, only 47, 210 orders to show cause were issued. See 1973 INS Annual Report at p. 78. Of the 505,949 persons apprehended in fiscal year 1972, only 35,899

(footnote cont'd)

orders to show cause were issued. See letter dated March 20, 1975, from Carl T. Wack, Associate Commissioner of INS to the Institute for Public Interest Representation of Georgetown University Law Center in response to the Institutes Freedom of Information Act dated March 5, 1975, p. 2.

Even a smaller percentage of those apprehended actually are referred to immigration law judges for a deportation hearing. Only 45,301 cases were referred in fiscal year 1974, 42,054 in fiscal year 1973 and 33, 190 in fiscal year 1972. See 1974 INS Annual Report at 16; 1973 INS Annual Report at p. 15; 1972 INS Annual Report at p. 15.

Nor has the government demonstrated that the appointment of counsel would interferewith the administrative process. Counsel presently appear in about 50% of all deportation proceedings. Haney, Deportation and the Right to Counsel, 11 Harv. Inter.L.J. 177, 181 (1970). One expert in this area observed that such participation ." . . . is generally welcomed as insuring due process." Gordon, Right to Counsel in Immigration Proceedings, 45 Minn. L.Rev. 875 (1961). By assuring that hearings are fair, appointment of counsel could result in limiting judicial involvement in the proceeding.

Appointment of counsel also makes it possible for INS to streamline its deportation proceedings particularly in cases involving simple factual and legal issues (as the government contends Petitioner's case is). Such has been the experience in the New York District office under the M.A.S.H. program as explained and supported in the official I&N Reporter and referred to in Brief for Petitioner at 38-39.

There is also no question as to the availability of sufficient counsel to represent aliens in deportation proceedings. As pointed out in the concurring opinion of Justices Brennan, Douglas and Stewart, in Argersinger v. Hamlin, supra at 40-41, clinical law programs and law students can provide an important source of representation for indigents.

III. PETITIONER HAD AN ABSOLUTE STATUTORY RIGHT TO RETAIN COUNSEL WHICH SHE DID NOT WAIVE.

Petitioner maintains that she has an absolute right to retain counsel. She contends that she was denied this statutory right when the immigration judge failed to adequately explain the right to her, failed to inquire about her ability to secure counsel at her own expense, failed to inform her of the availability of pro bono legal services and finally, failed to offer to adjourn the hearing so she could seek this legal assistance. (Argument III, Brief for Petitioner at 34.)

The government argues that Petitioner was fully informed of her right to retain counsel which she waived. The government argues further that even if this were not so, the hearing was not fatally flawed since Petitioner was not prejudiced by the lack of counsel. (Brief for Appellee, at 23)

A. The Government Improperly Applies a Prejudice Test to This Absolute Right to Retain Counsel.

There is no support for the government's contention that a denial of an alien's statutory right to retain counsel in a deportation proceeding is proper as long as it does not prejudice the outcome of the proceeding. Neither the statute nor the regulations expressly or impliedly place such a restriction on the alien's right. See, 8 U.S.C. §§1252(b)(2) and 1362; 8 C.F.R. 242.2(a), 242.16(a) and 292.5(b).

The government's string cites to cases in support of its prejudice test contains only two cases dealing at all with an alien's statutory right to retain counsel. Of those, Villanueva-Turado v. I.N.S., 482 F.2d. 886 (5th Cir. 1973) turned on a waiver issue; while the second Castaneda-Delgado v. I.N.S., 525 F.2d. 1295 (7th Cir. 1975) held just the opposite of what was represented by the government to this Court.

The Seventh Circuit in Castaneda-Delgado v. I.N.S., supra, specifically recognizes the absolute nature of the statutory right to retain counsel:

> In our view the right to be represented by counsel of their choice granted to aliens in deportation proceedings by statute and regulations is too important and fundamental a right to be circumscribed by a harmless error rule.

Id. at 1302.

The Court referred to the clear language of the statute and regulations:

> The language of Sections 242(b)(2) and 292 of the Immigration and Naturalization Act, 8 U.S.C. 1252(b)(2) and 1362 (1970), as implemented by the regulations, clearly and unambiguously grants aliens the right to counsel of their choice in deportation proceedings. Such provisions are an integral part of the procedural due process to which the alien is entitled. Chlomos v. I.N.S., supra 516 F.2d. at 313. These provisions would be eviscerated by the application of the harmless error doctrine, and we see no justification for such evisceration.

Id.

Even if a prejudice test was suggested by the language of the statutes or regulations, rules of statutory construction in immigration cases would bar such an interpretation. As Chief Judge Kaufman recently stated in Lennon v. I.N.S., 527 F.2d. 187, 193 (2d. Cir. 1975):

> [I]t is settled doctrine that deportation statutes must be construed in favor of the alien.
>
> [S]ince the stakes are considerable for the individual, we will not assume that Congress meant to trench on his freedom beyond that which is required by the narrowest of several possible meanings of the words used.

Id.

Chief Judge Kaufman's holding was most recently cited with approval by this Court in Marino v. I.N.S., 537 F.2d 688 (2nd Cir. 1976) and was supported by reference to five Supreme Court decisions. See Fong Haw Ran v. Phelan, 333 U.S. 6, 10 (1948); Rosenberg v. Fleuti, 374 U.S. 449, 459 (1963); Bonetti v. Rogers, 356 U.S. 691, 699 (1958).

Therefore, Petitioner maintains that this Court should follow its own rules of statutory construction and the lead of the Seventh Circuit by refusing "to indulge in 'nice calculations as to the amount of prejudice flowing from the denial' or to apply a harmless error test." Castaneda-Delgado v. I.N.S., at 1302.

B. Petitioner Was Not Fully Informed of Her Absolute Right to Retain Counsel

The immigration law judge had a duty to thoroughly inform the alien of her right to retain counsel. Hadlovits v. Adcock, 80 F.Supp. 425 (E.D. Mich. 1948). In order to be fully informed of this right an alien must understand the nature of the proceedings and the importance of counsel. Hadlovits v. Adcock, Id. and Yiu Fong Cheung v. I.N.S., 418 F.2d 460, 463 (D.C. Cir. 1969). Thus, while the government argues that Petitioner was twice informed of her right to counsel, the record shows that on both occasions she did not understand either the nature of the proceedings or the significance of proceeding without counsel. (Jt. App. 36, 40)

Equally fatal was the government's failure to inquire into Petitioner's ability to pay for counsel and to inform her of the availability of free legal services. In its brief the government defends this failure by attempting to shift the burden onto the alien to volunteer the information that she cannot afford counsel. The government makes no legal or equitable argument in support of such a haphazard system that can only serve to indiscriminately deny the right to counsel to less aggressive or less asser-

tive aliens called before I.N.S. [5/]

C. Petitioner Did Not Knowingly, Intelligently and Voluntarily Waive Her Right to Retain Counsel.

While the right to be represented by counsel in a deportation proceeding may be waived, the waiver must be intelligent, knowing and voluntary. Valasquez Espinosa v. I.N.S., 404 F.2d 544, 546 (9th Cir. 1968); Yiu Fong Cheung v. I.N.S., supra. It is axiomatic that as long as Petitioner was not fully informed of her right to counsel, she could not have knowingly or intelligently waived this right.

Petitioner's affidavit (Jt. App. at 36) and the transcript of the deportation hearing (Jt. App. at 40) demonstrate that Petitioner did not intend at all to waive her right to be represented by counsel at a deportation hearing, let alone enter an intelligent and knowing waiver.

While any waiver of counsel at a preliminary interview is separate and apart from the required waiver of counsel.

[5/] The government maintains that had Petitioner requested appointed counsel, the Service would have immediately referred her to the appropriate legal aid office in accordance with the INS Investigators Handbook. (See page 4, n.1 of Brief of Appellee.) However, the provision of the Handbook referred to is infirm for the reason that it also places the burden on the alien to indicate that he desires counsel and to claim that he is without funds. (See Addendum of Brief of Appellee.) However, as pointed out in Petitioner's brief, certain District offices have instituted a more systematice effective practice of informing aliens of the availability of free legal services (Brief for Petitioner 38-39, n.11)

at a deportation proceeding, it cannot be said that Petitioner waived her right to counsel knowingly in this earlier proceeding. Petitioner did not understand the nature of this preliminary proceeding as evidenced by her affidavit:

> The man who asked the questions asked me if I wanted to have a lawyer. I did not understand why I would need a lawyer, since I did not think that there was any problem with my staying . . . . If I had known what my November 18 interview was actually about, I would have told the man that I wanted to have a lawyer. (Jt. App. at 36.)

It is equally clear that Petitioner did not understand the nature of the actual deportation proceeding when she allegedly waived her right to counsel on that occasion. The government in its brief (Brief of Appellee, at 21) refers to page 40 of the Joint Appendix as proof of Petitioner's waiver. Yet, later in the transcript, subsequent to this "waiver," the immigration law judge is forced to go off the record to explain the nature of the proceeding to Petitioner in Spanish. (Jt. App. at 42.)[6/]

Petitioner's lack of understanding is implicit in her testimony. For example, in response to questions about

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6/ The government relies on Burquez v. I.N.S., 513 F.2d 751 (10th Cir. 1975) to support its waiver theory. However, in Burquez it was clear that Petitioner understood the purpose of the hearing before waiving his right to counsel.

whether she wanted an attorney, she did not say "no" but instead persisted in asking whether there would be a "problem" (Jt.App. at 40), indicating that nothing was occurring which would create any problem about her status. She also asked the judge, "Would it be better to have a lawyer?" (Jt.App. at 41) and what the government contends is a waiver was elicited only after her comment:

> I don't think there will be a problem.
> I don't think I need a lawyer. (Jt.App. at 41.)

Read in light of the Petitioner's belief that she was merely producing information to qualify for permanent residence and not defending a deportation charge, this statement should not be viewed as a waiver of counsel at a deporta-hearing.

In addition, the immigration law judge's own answers to the Petitioner's questions about counsel were misleading and themselves contributed to the misinformation upon which the alleged waiver was predicated. Although the judge honestly said, "Well, I don't know what your case is, . ." (Jt.App. at 41) and presumably did not know the facts of the particular case, he must have known that he was conducting a deportation hearing, that Petitioner did not speak English, that INS believed that it had a prima facie case of deportability against the Petitioner, and

that, as a general rule, a lawyer would be helpful in the preparation of a defense. He also must have known from Petitioner's statements that she was struggling to understand the purpose of counsel and was not rejecting counsel out of hand. Thus, the immigration law judge was very much on notice that the Petitioner desired counsel. In the context reflected in the hearing transcript, his evasive answers were themselves a factor in influencing the Petitioner to proceed without counsel. (Jt. App. at 41.)

The unknowing nature of the waiver decision was compounded by the lack of time for reflecting and consultation imposed upon the Petitioner. The Act anticipates that the alien will have reasonable notice of the deportation proceedings and a reasonable opportunity to examine the evidence against her or him and to prepare a defense, 8 U.S.C. §1252(b)(1) and 8 U.S.C. §1252(b)(3). The regulation guarantees at least seven (7) days advance notice of the hearing, 8 C.F.R. 242.1(b), and that requirement is mandatory, Yiu Fong Cheung v. I.N.S. supra. In the present case, however, the Petitioner had no such opportunity, since she did not know that she was being summoned to a hearing. The most that was offered her was the opportunity for a "recess"

whatsoever that the immigration judge was offering that she could have a day or two to go home and think the matter over, with the advice of family and friends.

Finally, the failure of the immigration judge to inform Petitioner of the availability of pro bono legal services robbed the alleged waiver of the requisite voluntariness. Cf. Barthold v. I.N.S.,[7/] 517 F.2d 689 (5th Cir. 1975).

7/ In Barthold v. I.N.S. the 5th Circuit found that Barthold had waived his right to counsel after the immigration judge offered him the opportunity to obtain a free lawyer. The Court held, "Lack of counsel in this case does not constitute a denial of due process because Barthold was offered an opportunity to obtain representation he could afford." Id at 691. The following colloquy between the judge and Barthold can be sharply contrasted with that just described in Petitioner's case. At Barthold's deportation hearing the following colloquy occurred:

Q: You have the right to be represented by an attorney at this hearing, if you want, or you can go ahead if you do not choose to be represented. Do you want to be represented by a lawyer?

A: Can the Government give me an attorney?

Q: No, the Government cannot provide an attorney for you in these cases because we are prohibited by law from doing so. It must be an attorney at your own expense. However, if you do not have the money to afford an attorney. I can adjourn the case and give you the opportunity to contact Legal Services to see whether or not they will provide an attorney for you. Do you have -- you say you do not have sufficient money to pay for an attorney?

A: No. Sir.

Q: Well, do you want the opportunity to call Legal Services to see if they will provide you with an attorney?

A: I will continue without an attorney.

(footnote cont'd)

Q: Very well. If at anytime during the course of the proceedings you feel that you are unable to represent any more or that you think an attorney's answer will be necessary, just let me know and I will adjourn the case to still give you a chance to get one. You understand that you will have the continuing right until the case is completed?

A: Yes. (Emphasis added in decision.)

Id. at 691.

IV. THE GOVERNMENT'S ARGUMENT IN SUPPORT OF THE BOARD'S LIMITED GRANT OF VOLUNTARY DEPARTURE IS INTERNALLY INCONSISTENT.

Petitioner submits that the Board's order granting her voluntary departure if she exercised the option within thirty (30) days presented her with a Hobson's Choice, i.e., to either exercise voluntary departure and abandon her right to judicial review, or petition this Court for review and lose voluntary departure. Petitioner maintains that the imposition of that choice is an unconstitutional burden on the exercise of her statutory right to judicial review, and an abuse of administrative discretion since Congress did not intend for voluntary departure to be used to inhibit good faith petitions for review of final orders of deportation. (Argument V, Brief of Petitioner at 49.)

Petitioner presented extensive legislative history and other support for her characterization of the intent and legal purpose of this remedial device. The government does not challenge Petitioner's interpretation of the law. Rather, the government argues inconsistently -- (1) that in order to qualify for voluntary departure under INS regulations (8 C.F.R. §244.1) one must be "willing and have the immediate means with which to depart promptly from the United States." Id., which

" is inconsistent with the prosecution of an appeal

regarding deportability." (emphasis added) (Brief of Appellee at 27); and (2) Petitioner should have requested an extension of voluntary departure in order to prosecute the appeal.

Argument two(2) offered in conjunction with one (1), that prosecution of an appeal is inconsistent with INS requirements for a grant of voluntary departure, suggests that a District Director might extend a grant in violation of INS regulations. It is unlikely that a Director would act in such a manner given the announced general policy of using voluntary departure to discourage the prosecution of appeals. Matter of M, 4 IN 626 (Dec. 1952); Wong Ching Fui, (BIA Aug. 21, 1969) cited in Fan Wan Keung v. I.N.S., 434 F.2d 301, 304-05 (2nd Cir. 1970). The Director might also be dissuaded from extending voluntary departure since an administrative agency is bound and required by law to follow its own regulations. Francis v. Davidson, 340 F.Supp. 351, 365-366 (D.Md. 1972), aff'd 409 U.S. 904 (1972).

Thus, it is this punitive INS practice, codified in an agency regulation, which Petitioner appropriately challenges in one unified appeal of the Board's Final Order of Deportation. Petitioner's approach is consistent with the legislative intent to remedy unnecessary delays in deportation proceedings, by enacting a single, separate statutory form of judicial review

of administrative orders of deportation. U.S. Code Cong. and Adm. News 97th Cong., 1st Sess., 2950 (1961). See Brief of Petitioner, at 59-61.

CONCLUSION

For the above stated reasons and those presented in our opening brief, the decision of the Board of Immigration Appeals should be reversed.

Respectfully submitted,

ROBERT S. CATZ
ELLEN SUDOW
KATHRYN DAHL

The URBAN LAW INSTITUTE of the
ANTIOCH SCHOOL OF LAW
1624 Crescent Place, N.W.
Washington, D.C. 20009
202/265-9500

JOANNE M. MINER
WATERBURY LEGAL AID
61 Field Street
Waterbury, Connecticut 06702
203/756-8074

Counsel for Petitioner

September 24, 1976

CERTIFICATE OF SERVICE

I do hereby certify that two copies of the foregoing Brief of Petitioner was mailed postage pre-paid to Mary P. Maguire, Assistant U.S. Attorney for the Southern District of New York, United States Courthouse, Foley Square, New York, New York 10007, this 24th day of September 1976.

ROBERT S. CATZ